

Appl. No. : 10/005,710
Filed : November 8, 2001

REMARKS

Claim 1 has been amended. Claims 1 and 3-6 remain pending in the present application. Support for the amendments is found in the Specification and claims as filed. Accordingly, the amendments do not constitute addition of new matter. Reconsideration of the application in view of the foregoing amendments and following comments is respectfully requested.

Rejection under 35 U.S.C. § 112, second paragraph

The Examiner rejected Claims 1 and 3-6 under 35 U.S.C. § 112, second paragraph, because the Examiner believes that Claim 1 contains limitations that were non-elected.

M.P.E.P. 806.04 states that “a generic claim should include no material element additional to those recited in the species claims, and must comprehend within its confines the organization covered in each of the species.”

Claim 1 has been amended to recite “a group of autoantigens...comprising myosin, oxidized LDL, heat shock protein-60, β -2-glycoprotein-1, platelet glycoprotein, and C1q immune complexes.” In an election of species for prosecution on the merits, Applicant had selected oLDL.

Even though Claim 1 recites more than one species, Claim 1 is a generic claim. The binding factor is that in every embodiment recited in Claim 1, oLDL is tested. This is unlike a Markush grouping in which alternative embodiments are recited. As such, Claim 1 includes no material element additional to those recited in the species claims and comprehends within its confines the organization covered in each of the species. As oLDL was selected for prosecution on the merits, Claim 1 is included in the prosecution because the genus of Claim 1 reads on the elected species. Being a generic claim, Claim 1 is proper and cannot be amended to remove non-elected species, as this would broaden, not narrow the claim.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 112, second paragraph.

Rejection under 35 U.S.C. § 103

The Examiner rejected Claims 1 and 3-6 under 35 U.S.C. § 103(a) as being unpatentable over Kovanen in view of Stone et al. Kovanen discloses autoantigens and several exogenous

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antigens as having been implicated in the pathogenesis of myocardial infarction including oxidized LDL and cardiolipin.

According to M.P.E.P.2143.03, “[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.”

Claim 1 has been amended to recite “a group of autoantigens...comprising myosin, oxidized LDL, heat shock protein-60, β-2-glycoprotein-1, platelet glycoprotein, and C1q immune complexes.” This amendment states that all the recited autoantigens are to be tested, which is not taught or suggested by Kovanen.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing amendments and comments, it is respectfully submitted that the present application is fully in condition for allowance, and such action is earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully invited to call the undersigned in order to resolve issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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